TR & SNF, Inc. d/b/a The Nursing Center at University Village and TALF, Inc. d/b/a The Inn at University Village, a single employer *and* 1199SEIU, United Healthcare Workers East, Florida Region. Case 12–CA–216475

November 28, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by 1199SEIU, United Healthcare Worker East, Florida Region (the Union) on March 13, 2018, the General Counsel issued a complaint against TR & SNF, Inc. d/b/a The Nursing Center at University Village (Respondent Nursing) and TALF, Inc. d/b/a The Inn at University Village (Respondent Inn), a single employer (collectively, the Respondent) on June 28, 2018, alleging that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to engage in effects bargaining. The Respondent did not file an answer.

On September 5, 2018, the General Counsel filed with the Board a Motion for Default Judgment. Thereafter, on September 7, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before July 12, 2018, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's Motion for Default Judgment disclose that the Region, by letter dated July 23, 2018, and sent via email to the Respondent's counsel, advised the Respondent that the time limits for filing an answer to the complaint had expired. The Region's letter also notified the Respondent that unless an answer was received by August 6, 2018, the Region would file a motion for default judgment. On August 6, 2018, the Respondent requested a 10-day extension. The Regional Director granted the request and extended the date for filing an answer to August 17, 2018. The Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Nursing has been a Florida corporation with an office and place of business at 12250 N. 22nd Street, Tampa, Florida, and has been engaged in the operation of a skilled nursing facility providing long-term healthcare and rehabilitative services to residents.

During the past 12 months, in conducting its business operations as described above, Respondent Nursing derived gross revenues in excess of $100,000, and purchased and received at its Tampa, Florida facility goods valued in excess of $50,000 directly from points outside the State of Florida.

At all material times, Respondent Inn has been a Florida corporation with an office and place of business at 12250 N. 22nd Street, Tampa, Florida, and has been engaged in the operation of an assisted living facility providing assistance with daily living activities to residents.

During the past 12 months, in conducting its business operations as described above, Respondent Inn derived gross revenues in excess of $250,000, and purchased and received at its Tampa, Florida facility goods valued in excess of $50,000 directly from points outside the State of Florida.

At all material times, Respondent Nursing and Respondent Inn have been affiliated business enterprises with common officers, ownership, directors, management and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations within the same continuing care retirement community; and have held themselves out to the public as a single-integrated business enterprise.

We find that Respondent Nursing and Respondent Inn constitute a single-integrated business enterprise and a single employer within the meaning of the Act, and are an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jeannette Baltzly	-	Skilled Nursing Facility Administrator
John Bartle	-	Managing Director, AmeriCare Group

At all material times, the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All regular full time and regular part time non-supervisory Associates employed at The Nursing Center at University Village (recognizing that licensed nurses are required by FL Statute to have certain supervisory responsibilities and training) and The Inn at University Village, excluding guards, supervisors as defined by the Act, and confidential Associates and Associates working less than fifteen (15) hours per pay period, as defined in Section 20.

Since 2004, a more precise date being presently unknown, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from January 1, 2016, to October 31, 2017, and which has been extended on a month-to-month basis until either party elects to terminate the extension.

Since 2004, a more precise date being presently unknown, the Union has been the exclusive collective-bargaining representative of the unit within the meaning of Section 9(a) of the Act.

About February 9, 2018, the Respondent informed the Union, in writing, that it anticipated ceasing its operations.

About February 16, 2018, the Union, in writing, requested that the Respondent meet and bargain collectively with the Union about the effects of the Respondent's decision to cease operations on the wages, hours, and other terms and conditions of employment of the unit.

The subjects set forth in the preceding paragraph relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

Since about February 16, 2018, the Respondent has failed and refused to meet and bargain collectively with the Union about the effects of its decision to cease its operations on the wages, hours, and other terms and conditions of employment of the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet and bargain collectively with the Union about the effects of the cessation of its operations, we shall order the Respondent to bargain with the Union, on request, about the effects of the Respondent's decision to cease its operations on bargaining unit employees. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.,* 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).[1]

[1] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). Neither the complaint nor the motion has specified the impact, if any, on the unit employees of the Respondent's decision to cease operations. Therefore, we do not know whether, or to what extent, the Respondent's refusal to bargain about the effects of its decision has affected the unit employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Kephart Trucking Co.*, 360 NLRB No. 22, slip op. at 2 fn. 2 (2014); *Fabricating Engineers, Inc.,* 341 NLRB 10, 11 fn. 1 (2004).

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union about the effects of its decision to cease operations; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith. In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Additionally, we shall order the Respondent to compensate unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Regional Director for Region 12 allocating backpay to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondent, TR & SNF, Inc. d/b/a The Nursing Center at University Village and TALF, Inc. d/b/a The Inn at University Village, Tampa, Florida, a single employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with 1199SEIU, United Healthcare Workers East, Florida Region (the Union) as the exclusive collective-bargaining representative of the employees in the following appropriate unit about the effects of its decision to cease operations:

> All regular full time and regular part time non-supervisory Associates employed at The Nursing Center at University Village (recognizing that licensed nurses are required by FL Statute to have certain supervisory responsibilities and training) and The Inn at University Village, excluding guards, supervisors as defined by the Act, and confidential Associates and Associates working less than fifteen (15) hours per pay period, as defined in Section 20.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union about the effects of its decision to cease its operations on the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(c) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Tampa, Florida, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or ceased operations at the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all cur-

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

rent employees and former employees jointly employed by the Respondents at any time since February 16, 2018.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 28, 2018

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with 1199SEIU, United Healthcare Workers East, Florida Region (the Union) as the exclusive collective-bargaining representative of our unit employees in the following unit about the effects of our decision to cease operations:

> All regular full time and regular part time non-supervisory Associates employed at The Nursing Center at University Village (recognizing that licensed nurses are required by FL Statute to have certain supervisory responsibilities and training) and The Inn at University Village, excluding guards, supervisors as defined by the Act, and confidential Associates and Associates working less than fifteen (15) hours per pay period, as defined in Section 20.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union about the effects of our decision to cease operations on the unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the unit employees their normal wages for the period set forth in the remedy section of the Board's Decision and Order, with interest.

WE WILL compensate our affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

> TR & SNF, INC. D/B/A THE NURSING CENTER AT UNIVERSITY VILLAGE AND TALF, INC. D/B/A THE INN AT UNIVERSITY VILLAGE, A SINGLE EMPLOYER

The Board's decision can be found at https://www.nlrb.gov/case/12-CA-216475 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.